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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,984	04/13/2004	Matthew Purkeypile	020699-100500US	5324
37490 7590 06/14/2007 Trellis Intellectual Property Law Group, PC 1900 EMBARCADERO ROAD SUITE 109 PALO ALTO, CA 94303			EXAMINER MEHRMANESH, ELMIRA	
			ART UNIT 2113	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/823,984	Applicant(s) PURKEYPILE ET AL.	
	Examiner Elmira Mehrmanesh	Art Unit 2113	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Final Rejection**

This action is in response to an amendment filed on March 12, 2007 for the application of Purkeypile et al., for a "Modular imaging of computer software for system install and restore" filed April 13, 2004.

Claims 1-16 are pending in the application.

Claims 1-9 and 11-16 are rejected under 35 USC § 102.

Claim 10 is rejected under 35 USC § 103.

Claims 1 and 12-15 have been amended.

### ***Claim Rejections - 35 USC § 101***

In view of the Applicant's amendments, the rejection of claims 12 and 13 under 35 USC § 101 has been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kroening et al. (U.S. Patent No. 6,080,207).

As per claim 1, Kroening discloses a method for configuring target computer systems using different combinations of a plurality of software components (col. 3, lines 57-62) stored in a storage source (Fig. 1, element 30), the method comprising:

determining a configuration for a target computer system, the configuration specifying a combination of software components desired (col. 3, lines 62-63)

creating an image of a first plurality of software components, the image created from the storage source including the plurality of software components (col. 4, lines 46-55)

storing the image onto the target computer system (Fig. 1, element 50), the image being transferred from the storage source (Fig. 1, element 30)

determining additional software components to be stored onto the target computer system based on the configuration (col. 4, lines 55-60)

storing the additional software components by using a predefined module, the additional software components being transferred from the storage source, wherein other target computer systems may be configured by using the predefined module, the predefined module using the plurality of software components stored in the storage source to create different combinations of the software components (col. 4, lines 45-67 through col. 5, lines 1-10).

As per claim 2, Kroening discloses a module includes at least a portion of setup information provided by a manufacturer of a first software component associated with a

first module (col. 4, lines 8-18).

As per claim 3, Kroening discloses a module includes at least a portion of a compressed software component (col. 6, lines 46-50).

As per claim 4, Kroening discloses a module includes at least a portion of a PAC file (col. 4, lines 49-60).

As per claim 5, Kroening discloses the image includes a foundation image (col. 4, lines 49-60).

As per claim 6, Kroening discloses the image includes a recovery image (col. 5, lines 45-52).

As per claim 7, Kroening discloses storing a plurality of data files (Fig. 1, element 30) wherein a data file includes system specific configuration information (col. 4, lines 8-18).

As per claim 8, Kroening discloses the data files are stored in a common directory (col. 5, lines 39-42).

As per claim 9, Kroening discloses a code field is used to indicate what images can be loaded onto a particular system (Fig. 3).

As per claim 11, Kroening discloses storing a process for recovering an initial installation (col. 5, lines 45-52).

As per claim 12, Kroening discloses an apparatus for configuring target computer systems using different combinations of a plurality of software components (col. 3, lines 57-62) stored in a storage source (Fig. 1, element 30), the apparatus comprising:

a computer-readable storage medium (col. 2, lines 16-21) comprising:

one or more instructions for determining a configuration for a target computer system, the configuration specifying a combination of software components desired (col. 3, lines 62-63)

one or more instructions for creating an image of a first plurality of software components, the image created from the storage source including the plurality of software components (col. 4, lines 46-55)

one or more instructions for storing the image onto the target computer system (Fig. 1, element 50), the image being transferred from the storage source (Fig. 1, element 30)

one or more instructions for determining additional software components to be stored onto the target computer system based on the configuration (col. 4, lines 55-60)

one or more instructions for storing the additional software components by using a predefined module, the additional software components being transferred from the storage source, wherein other target computer systems may be configured by using the predefined module, the predefined module using the plurality, of software components stored in the storage source to create different combinations of the software components (col. 4, lines 45-67 through col. 5, lines 1-10).

As per claim 13, Kroening discloses a computer-readable storage medium (col. 2, lines 16-21) for configuring target computer systems using different combinations of a plurality of software components (col. 3, lines 57-62) stored in a storage source (Fig. 1, element 30), the computer-readable storage medium comprising:

one or more instructions for determining a configuration for a target computer system, the configuration specifying a combination of software components desired (col. 3, lines 62-63)

one or more instructions for creating an image of a first plurality of software components, the image created from the storage source including the plurality of software components (col. 4, lines 46-55)

one or more instructions for storing the image onto the target computer system (Fig. 1, element 50), the image being transferred from the storage source (Fig. 1, element 30)

one or more instructions for determining additional software components to be stored onto the target computer system based on the configuration (col. 4, lines 55-60)

one or more instructions for storing the additional software components by using a predefined module, the additional software components being transferred from the storage source, wherein other target computer systems may be configured by using the predefined module, the predefined module using the plurality, of software components stored in the storage source to create different combinations of the software components (col. 4, lines 45-67 through col. 5, lines 1-10).

As per claim 14, Kroening discloses an apparatus for configuring target computer systems using different combinations of a plurality of software components (col. 3, lines 57-62) stored in a storage source (Fig. 1, element 30), the apparatus comprising:

means for determining a configuration for a target computer system, the configuration specifying a combination of software components desired (col. 3, lines 62-63)

means for creating an image of a first plurality of software components, the image created from the storage source including the plurality of software components (col. 4, lines 46-55)

means for storing the image onto the target computer system (Fig. 1, element 50), the image being transferred from the storage source (Fig. 1, element 30)

means for determining additional software components to be stored onto the target computer system based on the configuration (col. 4, lines 55-60)

means for storing the additional software components by using a predefined module, the additional software components being transferred from the storage source,



wherein other target computer systems may be configured by using the predefined module, the predefined module using the plurality of software components stored in the storage source to create different combinations of the software components (col. 4, lines 45-67 through col. 5, lines 1-10).

As per claim 15, Kroening discloses a method for recovering software components using different combinations of a plurality of software components (col. 5, lines 45-52) stored in a storage source (Fig. 1, element 30), the method comprising:

installing at least a portion of a foundation image (col. 4, lines 49-60) from the storage source (Fig. 1, element 30)

selectively allowing a user to install a software component from a third-party installation medium (col. 6, lines 34-53), the software component being transferred from the storage source (Fig. 1, element 30)

selectively allowing a user to install a software component from a secondary file (col. 6, lines 51-53), wherein the software component from the third-party installation medium and the secondary file being transferred from the storage source (Fig. 1, element 30), wherein other target computer systems may be configured using the plurality, of software components stored in the storage source to create different combinations of the software components (col. 6, lines 34-50).

As per claim 16, Kroening discloses the secondary file includes a PAC file (col. 4, lines 49-60).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kroening et al. (U.S. Patent No. 6,080,207) in view of Jenevein et al. (U.S. Patent No. 6,615,365).

As per claim 10, Kroening fails to explicitly disclose a partition.

Jenevein teaches:

creating an initialization file (col. 13, lines 17-20)

copying a recovery image to a temporary location (col. 12, lines 9-18 and col. 16, lines 34-43)

restoring the recovery image (Fig. 6, element 624) to a first partition from a temporary location (Fig. 7, element 734)

copying the recovery image from the first partition to a temporary location (Fig. 7, elements 712, 716)

copying a foundation image to the first partition via a network (col. 16, lines 34-43)

restoring the foundation image to a second partition (Fig. 7, element 728)

copying permanent modules to the first partition; copying a data file to the first partition (Fig. 7, elements 712, 734)

copying temporary modules to the first partition (Fig. 7, elements 712, 734)

copying a module including at least a portion of a software component to the first partition (Fig. 7, element 734)

executing one or more modules; and deleting modules from the first partition (col. 14, lines 34-38).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of creating and delivering software of Kroening et al. in combination with the image recovery system of Jenevein et al. to effectively recover/update computer system images.

One of ordinary skill in the art at the time of the invention would have been motivated to make the combination because both inventions disclose a method of recovering computer system images by providing data files containing recovery images (Kroening, col. 5, lines 45-52) and (Jenevein, col. 16, lines 34-43). Kroening et al.

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discloses of copying a recovery image from a storage source (Fig. 1, element 30) and sending it to the user for recovering from errors (col. 5, lines 45-52). Kroening et al. further discloses that the created disk image can be copied to secondary locations using other means of copying (col. 6, lines 45-50). Jenevein et al. discloses storage locations with image partitions for recovery (col. 6, lines 48-56).

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments page 1, the listing of the amended claims is missing claims 14 and 15.

Applicant's arguments page 2, Section 112 Rejections should be changed to Section 101 Rejections.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elmira Mehrmanesh whose telephone number is (571) 272-5531. The examiner can normally be reached on 9-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ROBERT W. BEAUSOLIEL  
SENIOR PATENT EXAMINER  
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